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Summary record of the 3073rd meeting
Held at the Palais Wilson, Geneva, on Thursday, 10 July 2014, at 10 a.m.

Chairperson: Sir Nigel Rodley

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The meeting was called to order at 10 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Initial report of Malawi (continued) (CCPR/C/MWI/1; CCPR/C/MWI/Q/1/Add.1 and 2)

1. *At the invitation of the Chairperson, the delegation of Malawi took places at the Committee table.*

2. **Ms. Banda** (Malawi) said that no cases of widow cleansing had been brought before the courts because the practice had only been criminalized in 2014 through the adoption of the Gender Equality Act. Previously, public awareness campaigns had been launched. Professional cleansers had also been sensitized and were subsequently involved in efforts to end that harmful practice.

3. **Mr. Nyirongo** (Malawi) said that the Prevention of Domestic Violence Act enabled the police to investigate reports by victims or witnesses of domestic violence. Women were often reluctant to report assaults against them, particularly if the offender was their husband, because of the risk to their marriage and financial stability. Training sessions on the issue had also revealed under-reporting by men of assaults against them because of the assumption that men could not and should not allow themselves to be victims of domestic violence. A rise in reporting had been noted subsequent to those training sessions. Further statistics were needed to fully grasp the scope of the situation.

4. The Child Care, Protection and Justice Act currently provided the only legal means of addressing trafficking in persons. While a more effective response to the issue was needed, existing structures, such as shelters for victims of domestic violence, were used for victims of trafficking. Comprehensive procedures for dealing with trafficking victims, including counselling and health care, would be set up in parallel with the enactment of the bill on trafficking in persons.

5. **Ms. Chizumila** (Malawi) said that detainees used visits from relatives, lawyers, the Malawi Human Rights Commission or the Inspectorate of Prisons to lodge complaints. Upon receipt of a complaint, action was taken by the relevant bodies or the Inspectorate itself, which could administer bail. Reports prepared by the Human Rights Commission or the Inspectorate were welcomed by prison officials and were sent to the relevant government departments. They informed the development of governmental initiatives, workshops for the general public and prison reforms.

6. **Mr. Kayira** (Malawi) said that since 2007 there had been one case in which the death penalty had been imposed; the delegation could provide details. The death penalty could be imposed for crimes including treason, murder and aggravated robbery. The courts referred to established common-law principles to determine which sentences to impose when prosecuting. Additionally, the Special Law Commission was formulating guidelines on sentencing. Persons held in pretrial detention for a period exceeding the prescribed time limit could sue for false imprisonment and be compensated through the courts.

7. **Ms. Banda** (Malawi) said that the Malawi Human Rights Commission was forwarding to the advisory committee on the granting of pardon a list of persons sentenced to death. An amendment had been made to criminal procedure whereby the criminal record of persons who had been arrested and subsequently discharged was expunged.

8. **Mr. Nyirongo** (Malawi) said that as Malawi was a dualist State, certain provisions of the Covenant had acquired constitutional status and others were given effect through various enactments, such as the Penal Code, and Acts on gender equality, child protection and disability. Furthermore, in areas where there was no legislation to give effect to the

requirements of the Covenant, appropriate legislation was drafted. The Special Law Commission was conducting a review of the laws in force on abortion and it was expected that by November 2014 it would submit its report to the Cabinet with a view to the enactment of further legislation.

9. **Mr. Bouzid** asked what was being done to remedy the shortage of judges, which had resulted in a backlog of cases. He also asked what measures were taken to address the problems of the prolonged pretrial detention of many people, the high fees charged by lawyers that impeded the process of justice, and the lack of legal aid funds and staff, which meant that legal aid was virtually non-existent.

10. He commended the high levels of religious tolerance in the State party. However, further information would be appreciated on reports that members of the Rastafarian community were refused employment in the public and private sectors, pupils were forced to cut their hair and children were denied access to some schools. What measures were being taken to restore the rights of the Rastafarian people?

11. Given that, despite the ban on child labour under the Constitution and the Labour Code, the phenomenon remained widespread in the State party, particularly on tobacco and tea plantations, and that reports by the National Statistical Office had revealed that over a quarter of children between the ages of 5 and 14 worked, what was being done to combat child labour and to allocate funds for the investigation of cases of suspected child labour? In addition, what was being done to address the contradictory definitions of a child in domestic legislation? What measures were in place to assist street children and how prevalent was that phenomenon?

12. **Mr. Vardzelashvili** asked for information on the enforcement of the Disability Act, which had come into force in 2012, on the disability trust fund, on the remedies available to persons with disabilities, on the grounds on which those persons could appeal, and on cases before the courts involving persons with disabilities. What body was responsible for monitoring the implementation of the Disability Act? What reporting mechanism was in place, other than the courts, for persons with disabilities whose rights had been violated? Which violations of the law concerning persons with disabilities were punishable by imprisonment?

13. He commended the repeal of the Penal Code provision that had restricted freedom of the press. In the light of reports that current relevant legislation was not in conformity with international standards, what was the status of the law on access to information? Did the State party envisage decriminalizing defamation? He would welcome clarification of all the cases involving journalists and human rights defenders listed in the table in paragraph 43 of the replies to the list of issues, together with information on the status of the Bill relating to the use and monitoring of the Internet. Details would also be appreciated on the detention of demonstrators who had called for the resignation of the police inspector-general implicated in the death of Robert Chasowa in 2011. Had there been an investigation of those detentions? Lastly, what plans were there to strengthen the independence of the public broadcasting system and improve the management of the corresponding board of trustees? What procedure was in place for the issue of a broadcasting licence?

14. **Ms. Majodina** expressed concern about the lawfulness of all police searches. She asked how it was determined that a case was urgent and what criteria were used to authorize a search without a warrant. Had any complaints been lodged about searches without a warrant since the amendment to the relevant provision of the Police Act? Were searches without a warrant carried out in compliance with article 17 of the Covenant?

15. **Mr. Flinterman** asked the delegation to clarify the conflicting information on the separation of convicted and unconvicted prisoners. Turning to question 16 of the list of issues, he wondered how the Government intended to roll out HIV treatment and

prevention services given that some vulnerable groups, especially homosexual men, were directly criminalized. Noting that the concerns raised about article 10 of the HIV/AIDS (Prevention and Management) Bill had apparently been addressed following consultations with all key stakeholders, he asked about the outcome of those consultations, whether the provisions in question had been withdrawn, and the status of the Bill.

16. With regard to question 19 of the list of issues, he noted with concern that, although the commission of inquiry into the demonstrations of 20 July 2011 had already presented its findings, no prosecutions had been brought and no compensation paid out. He would welcome more information on the recommendations of the commission and on lessons learned. He asked the delegation to comment on the "enormous challenges" faced in the enjoyment of the right to peaceful assembly, as mentioned in the State party report.

17. Lastly, he would be interested to hear about the Government's plans for dissemination of the Committee's concluding observations among the judiciary and the general public, and the role of the Human Rights Commission in that regard.

18. **Ms. Waterval**, noting that under the Malawian Penal Code child sexual abuse was considered as sexual relations with a girl under the age of 13, asked whether boys were also protected under criminal legislation. If not, were there are any plans to criminalize child sexual abuse regardless of gender? What steps was the State party taking to prevent child sexual abuse generally? She invited the delegation to comment on a case that had been brought to the Committee's attention in which a man who had sexually abused a child and infected her with HIV had had the charges against him dropped after paying the family of the victim compensation of US$ 17.

19. Noting that Malawi had one of the highest rates of child marriage in the world, she encouraged the State party to ensure that the Marriage, Divorce and Family Relations Bill, which proposed that the minimum marriage age should be increased to 18, was enacted as a matter of urgency. She endorsed the comments made by Mr. Bouzid in relation to question 17 of the list of issues and urged the State party to address the tensions between Christians and Muslims in the Mangochi region of the country, raising awareness of the need to respect freedom of religion.

20. **Mr. Zlătescu** said that he supported the comments made by Ms. Waterval in relation to questions 21 and 23 of the list of issues. The State party should increase efforts to end widespread child and forced marriage. He asked the delegation to comment on reports that some girls were trapped into early pregnancies and marriages after being forced into a rite of passage called initiation. Was it true that, in accordance with traditional custom, girls in some communities were persuaded to engage in premarital sex in order to get ready for their husbands and that in some cases parents paid adult men to sexually initiate their daughters? He urged the State party to take the necessary steps to enact the Marriage, Divorce and Family Relations Bill and asked when the Government planned to enact the Education Bill, which provided for compulsory education, and whether there was any intention to develop a national action plan to combat child marriage and a national policy on teenage reproductive health, to prosecute violence against women, including child marriage, and to establish shelters for survivors of gender-based violence and child abuse.

21. **Mr. Shany** asked whether the age of criminal responsibility had been increased from 7 to 10, as proposed some years previously.

22. **Mr. Seetulsingh** asked about the outcome of the case of Mr. John Kapito, the former chairperson of the Human Rights Commission, mentioned in the reply to question 18 of the list of issues. He would welcome clarification of the difference between "possessing seditious materials" and "possessing materials with seditious words".

23. **The Chairperson**, speaking as a member of the Committee, asked whether the reports of the Inspectorate of Prisons and the Ombudsman were published in hard copy or electronically. Noting that some examples of capital crimes had been provided, he said that it was important for the Committee to be informed of all capital crimes. He would be interested to hear of any cases in which persons who had been detained beyond the legal time limits had successfully initiated lawsuits and received reparation. Lastly, he asked whether spousal rape was a crime in Malawi.

The meeting was suspended at 11.20 a.m. and resumed at 11.45 a.m.

24. **Ms. Banda** (Malawi) said that measures taken by her Government to address problems relating to legal representation had included turning the Department of Legal Aid into a stand-alone institution, the Legal Aid Bureau. The rationale was that, as an independent entity, the Bureau would be able to access funding from other sources, including development partners, thus boosting its capacity. The Bureau had established a partnership arrangement with civil society organizations, under which it gave them accreditation to provide legal aid services in districts in which such services were lacking. A partnership agreement for the provision of pro bono legal services to clear the backlog at the pretrial stage had also been entered into with Irish Aid. The Government had increased the remuneration of legal aid lawyers with a view to attracting lawyers from private practice and had amended the Legal Education and Legal Practitioners Act to allow lawyers qualified in other jurisdictions to practise in Malawi.

25. The age of criminal responsibility had been raised from 7 to 10 in 2010. In the case of John Kapito, the prosecution had been dropped and he had filed a private lawsuit to obtain compensation from the Government. The reports of the Inspectorate of Prisons and the Ombudsman were in the public domain once they had been presented before Parliament. The Education Act, which provided for compulsory education, had been passed in 2013.

26. **Mr. Nyirongo** (Malawi) said that the right to freedom of religion was enshrined in the Constitution and could not be derogated from under any circumstances. His Government had taken note of the concerns of the Rastafarian community and was now formulating a strategy for addressing them and ensuring that Rastafarians enjoyed their right to religious freedom, bearing in mind the social challenges involved in accepting Rastafarians in employment and education.

27. The Government was well aware of the problem of child labour and exploitation, and the Ministry of Labour was doing its utmost to address the challenges. Efforts were being made to ensure that the relevant laws were enforced while taking into account socioeconomic problems, such as the high number of child-headed and single-parent households that relied on children participating in economic activity to support the family. The Ministry of Labour had commissioned research to ascertain the extent of the problem and ensure that children who were working were afforded the necessary protection and were able to also realize the right to education. The definition of childhood varied according to context in Malawi. For example, under the Penal Code, children were persons under the age of 16, but in the specific context of labour children were persons up to the age of 14.

28. **Mr. Kayira** (Malawi) said that, according to current statistics, a total of 77 broadcasting licences had been issued by the regulatory authority, including 16 to private television stations. While the State party acknowledged that interference had been a challenge in the past, the public broadcaster's coverage of the tripartite elections in May 2014 had been considered to be very independent by the electoral commission and foreign observers alike.

29. **Ms. Banda** (Malawi) said that the Government had adopted a national policy aimed at keeping girls in school, and the Ministry of Education and the Ministry of Gender, Children and Social Welfare were working together to tackle harmful practices such as initiation.

30. **Mr. Nyirongo** (Malawi) said that the Government was aware of the issue of spousal rape and was endeavouring to find a solution to legislate for it. It had originally been proposed to include spousal rape under the Prevention of Domestic Violence Act, but it had been omitted from the final version. The matter had come up for debate again during the drafting of the Gender Equality Act and the Marriage, Divorce and Family Relations Bill, but it had ultimately not been included there either, although the Bill did include a provision on rape in the case of spouses who were separated.

31. **Ms. Banda** (Malawi) said that the Police Act was the result of a consultative process launched by the Law Commission in the early 2000s to review all laws regulating the police. Although the bill had stalled at one point, there had been no political motivation for the delay. Having conducted extensive research in other jurisdictions, the Government was satisfied that the Act was in conformity with international instruments regulating searches without warrants.

32. **Mr. Kayira** (Malawi) said that the separation of remand and sentenced prisoners was a requirement under the Constitution as well as international law. The State party made every effort to ensure that the requirement was respected, but in some instances, due to a lack of space, the two categories of prisoners had been held together.

33. Searches without a warrant were the exception, and must be conducted by the police in accordance with strict rules in urgent cases. The delegation was not aware of any complaints in relation to search conditions not being respected or searches being considered to constitute harassment. However, such complaints could be brought before the courts. The Government was of the view that the procedure was in conformity with article 17 of the Covenant. Although the right to privacy was provided for under the Constitution, it was not an absolute right, and there were clear legal instances in which limitations applied.

34. **Ms. Banda** (Malawi) said that the HIV/AIDS (Prevention and Management) Bill was intended to be all-encompassing and prevent HIV within society as a whole; it was therefore difficult to see how it could be seen to marginalize homosexuals. The Bill had been delayed because, despite an extensive consultation process throughout the country, including with civil society and people living with HIV/AIDS, and study tours to other countries, it had been decided to embark on another round of consultations after the Bill had already been submitted to the Ministry of Justice and was ready to be discussed at Cabinet level. The Government must now decide whether the Cabinet should consider the Bill as already submitted, taking into account possible new proposals, or start the process over again and wait for a new draft.

35. **Mr. Nyirongo** (Malawi) said that one of the problems faced on 20 July 2011 had been the high level of ignorance among organizers and the police about the provisions of the Police Act, resulting in a failure to comply with most of the detailed procedures that it contained for conducting and controlling demonstrations. The commission of inquiry established to investigate the events of that day had published its findings in July 2012, making a number of specific recommendations to all the parties involved, including on the use of force by the police and the need to avoid sensationalism in the media. In response to the report, several training sessions on crowd control had been organized to ensure that police officers acted in accordance with the Police Act. Since July 2011, a number of protests had been held without incident, suggesting that important lessons had been learned.

36. **Ms. Banda** (Malawi) said that protesters sometimes had hidden agendas and could become hostile, which presented a challenge to the police. The many compensation claims

filed against the Government for damage caused during the protests had led to a review of the relevant legislation.

37. With reference to the dissemination of information, she said that her delegation would bring the initial report (CCPR/C/MWI/1) and the Committee's concluding observations to the attention of the Cabinet in Malawi.

38. **Mr. Nyirongo** (Malawi) said that the Government would follow the approach adopted with other core international human rights instruments, consisting in assembling all the documents relating to the session and disseminating them widely, particularly among those involved in drafting Malawi's report, as part of a process of continuous engagement with all stakeholders.

39. With regard to the sexual abuse of minors, he said that the Penal Code had been amended in 2010 to raise the age of consent for girls from 13 to 16. A new chapter had been added on offences against morality relating to children; in it the definition of sexual activity applied equally to boys and girls under the age of 16. Provisions on the sexual abuse of minors were also contained in the Prevention of Domestic Violence Act and the Child Care, Protection and Justice Act, which had created juvenile courts and imposed restrictions on how the media could report cases involving children. Lastly, there were child protection officers at almost all police stations responsible for spearheading prevention efforts through education and awareness-raising at the community level, and victim support units had been set up with the participation of traditional leaders in order to better identify abuse and respond to complaints.

40. **Ms. Banda** (Malawi), referring to reports that a girl in Malawi had been sexually assaulted and infected with HIV, said that her delegation, having not been aware of the matter, would investigate it in due course. Turning to the issue of the death penalty, she said that a list of capital offences would be compiled and submitted to the Committee, as requested. An advisory board had been set up to monitor implementation of the Disability Act; there was a directorate within the Human Rights Commission dealing specifically with issues pertaining to persons with disabilities.

41. **Ms. Waterval** requested further information on the rule relating to collaboration in court, whereby victims were required to produce a witness to testify that certain offences had taken place.

42. **Mr. Flinterman** said he wished to know why the prosecution of persons in connection with the events of 20 July 2011 had been delayed, and whether criminal proceedings were likely to be instituted in that regard.

43. **Mr. Kälin** invited the delegation to comment on reports that the State party's refugee status determination system had not rendered any decisions since December 2011, leaving thousands of cases pending, and that some asylum seekers had either been denied entry or deported on the grounds that their country of origin was not at war, despite the fact that the absence of conflict did not preclude the possibility of exposure to ill-treatment.

44. **Mr. Vardzelashvili** asked the delegation to comment on concerns that there was excessive Government influence in the appointment of executive board members of the Malawi Broadcasting Corporation and Television Malawi, and that the E-bill on access to information imposed restrictions on freedom of expression, particularly with regard to online media.

45. **Mr. Bouzid** requested statistics on street children in Malawi. He asked whether their number was growing, and whether the Government had established centres to provide support.

46. **The Chairperson**, speaking as a member of the Committee, asked whether reports of the Human Rights Commission and the Inspectorate of Prisons had been laid before Parliament. He sought clarification on the nature of the reports, and on whether they could be made available to the Committee.

47. He requested information on the provisions of the Police Act concerning the use of force, and recalled that, under the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, intentional lethal use of firearms could only be made when strictly unavoidable in order to protect life. He asked whether the force used during the protests of July 2011 was considered excessive under Malawian law and, if so, what measures had been taken against those responsible.

48. Lastly, he wished to know whether there had been any claims of false imprisonment in Malawi and whether any reparation had been awarded.

49. **Ms. Banda** (Malawi) said that the Ministry of Justice had been inundated with such claims, most of which were settled out of court as the Government had no defence. The Ministry had ordered the Police Service to discipline the officers implicated in those claims in order to curb unlawful conduct and mitigate the loss of resources incurred by the Government.

50. **Mr. Kanyama** (Malawi) said that, pursuant to the Police Act, officers were permitted to use firearms under certain specific circumstances, including when there was a threat to life and when persons guilty of a felony attempted to escape lawful custody. Such use was never intended to kill, but to disable. The events of 20 July 2011 had prompted the Government to ensure that, when handling demonstrations, police officers acted in accordance with the law, and particularly the Police Act.

51. **Ms. Banda** (Malawi) said that the Human Rights Commission and the Inspectorate of Prisons produced both ad hoc and annual reports, detailing the work carried out by the two institutions, the challenges faced and the recommendations put forward. In response to one of those recommendations, electric cooking pots had been supplied in every prison in the country, and elements of a report by the Human Rights Commission had been taken into account in the prosecution process relating to the Capital Hill Cashgate Scandal.

52. Turning to the issue of street children, she said that the Ministry of Gender, Children and Community Development was gathering official statistics and cooperating with the non-governmental organization SOS Children's Villages International, which managed a number of children's shelters in Malawi.

53. **Mr. Kayira** (Malawi) said that, in the prosecution of sexual offences, collaborative evidence was required, either in the form of a witness statement or resulting from the court's consideration of all the circumstances surrounding a case.

54. Regarding the events of 20 July 2011, he said that arrests had been made and a docket had been sent to the Director of Public Prosecutions, but proceedings had been delayed by the need to further investigate some elements of the case. Nevertheless, the Government was committed to holding the perpetrators accountable for their actions.

55. **Ms. Banda** (Malawi) said that there was political will to move the E-bill forward as soon as possible. The Malawi Broadcasting Corporation faced strong competition from the Zodiak Broadcasting Station, a privately owned station with national coverage that had, in the past, been chosen as the official broadcaster of electoral results by the Malawi Electoral Commission.

56. **Mr. Nyirongo** (Malawi) said that the Government had established a committee to clear the backlog of requests for asylum and refugee status, a task that should be completed

by the end of 2014. Efforts were also being made to develop a new immigration policy to guide legislative reforms in the field of migration.

57. **The Chairperson** said that, while Malawi had achieved considerable progress in terms of openness and respect for fundamental freedoms, there were still a number of issues to address. With that in mind, and in order to give greater focus to the Committee's recommendations to the State party, he requested the delegation to provide copies of the most recent reports laid before Parliament by the Inspectorate of Prisons and the Office of the Ombudsman, in addition to the list of cases in which force could be used by law enforcement officials under the Police Act.

The meeting rose at 1.05 p.m.